

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BOBBY J. HIBBS, §
§
Plaintiff, §
v. § Civil Action No. **3:10-CV-2396-L**
§
FEDERAL BUREAU OF PRISONS, et al., §
§
Defendants. §

ORDER

Before the court is the Findings and Recommendation of the United States Magistrate Judge (“Report”), filed December 23, 2010. Plaintiff did not file any objections.

This is a *pro se* civil rights action. Plaintiff Bobby J. Hibbs (“Hibbs” or “Plaintiff”), a visually impaired federal prisoner, asserts two claims for relief. Hibbs asserts a *Bivens* claim for deliberate indifference and a negligence claim under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671. Hibbs alleges that Dr. Joseph Capps, a prison doctor, was deliberately indifferent and negligent to his medical needs by failing to promptly treat his eye condition and by not timely referring him to a specialist. Plaintiff also contends that he was denied the opportunity to learn Braille.

The magistrate judge concluded that Plaintiff’s Complaint should be dismissed summarily pursuant to 28 U.S.C. § 1915(e)(2). The magistrate judge recommended that the negligence claim under the FTCA should be dismissed without prejudice for lack of subject matter jurisdiction. Specifically, the magistrate judge concluded that Plaintiff’s claim for negligence under the FTCA is premature and is not brought against the proper party. Further, the magistrate judge recommended that the *Bivens* claim should be dismissed with prejudice because Plaintiff’s allegations fail to state

a claim for deliberate indifference against any of the defendants. Finally, the magistrate judge concluded that to the extent that Plaintiff complains that he was denied the opportunity to learn Braille, he has failed to state a claim upon which relief can be granted.

Having reviewed the pleadings, file, and record in this case, and the Report, the court determines that the findings are correct. They are therefore **accepted** as those of the court. Accordingly, the court **dismisses without prejudice** Plaintiff's negligence claim under the FTCA. Further the court **dismisses with prejudice** Plaintiff's *Bivens* claim for deliberate indifference.

It is so ordered this 24th day of January, 2011.



Sam A. Lindsay
United States District Judge